LENA A. WARNER

IBLA 73-255 Decided May 29, 1973

Appeal from the decision of the California State Office, Bureau of Land Management, rejecting appellant's application R-1529 to purchase certain land under color of title.

Affirmed.

Color or Claim of Title: Generally

Where, through an apparent error, a county assessor required the owner of a tract of private land for which back taxes were owed to pay the assessed back taxes on adjacent federal land as a condition to permitting the owner to pay the back taxes to redeem her own land, the redemption certificate given as evidence that the owner has paid taxes on federal land does not constitute color of title, as the certificate does not purport to convey title.

Color or Claim of Title: Generally

With reference to historical duration, a color of title claimant must demonstrate either that the land has been held under claim or color of title in good faith, peaceful, adverse possession for a period of 20 years under proviso (a) of the statute, or since January 1, 1901, under proviso (b). No claim of lesser duration will qualify.

Color or Claim of Title: Good Faith

Where the claimant knows that the land for which she has paid taxes under protest is not owned by her, her subsequent claim to and occupancy of that land cannot be found to be premised on good faith, particularly after being advised by a county official that the land might not be hers.

Color or Claim of Title: Improvements

Where a color of title applicant seeks to acquire federal land under a class 1 claim based on the assertion that valuable

> improvements have been placed on the land, the improvements must be present at the time the application is filed.

APPEARANCES: Lena A. Warner, pro se.

OPINION BY MR. STUEBING

Lena A. Warner has appealed from the decision of the Bureau of Land Management's California State Office, which denied her application to purchase 11.03 acres as a Class 1 claim pursuant to the Color of Title Act of December 22, 1928, as amended, 33 U.S.C. § 1068, 1068a (1970).

The land in question is the east part of what once was supposedly the easement for a 20-acre site of the Benton Railroad Station. This 20-acre easement was granted to the Carson and Colorado Railway in 1884, and, as granted, it was entirely within the W 1/2 W 1/2 of section 32. As it was actually located on the ground, however, the rectangular station ground lay diagonally across the east boundary of the W 1/2 W 1/2 of section 32, so that the boundary divided the station's site roughly in half, with the subject land lying outside the W 1/2 W 1/2 section 32; and it was so shown on the plat in the office of the Mono County Assessor.

In 1924 one Edwin S. Moore received a patent under the Homestead Act which invested him with title to 160 acres, which included the SW 1/4 NW 1/4, NW 1/4 SW 1/4 of section 32. As already noted, this land embraced the entire station site easement as granted by the United States, but only a portion of it is actually located on the ground. The land lying to the east of this portion of the Moore homestead was never patented and remains in federal ownership. The easement for the station site was cancelled in 1944.

On April 21, 1964, appellant and her husband purchased a portion of the former Moore homestead consisting of 11.67 acres, described by metes and bounds and lying within the SW 1/4 NW 1/4 of section 32. The conveyance to the Warners was by deed executed by Arthur T. Moore and Bernice M. Moore. The file contains a letter written by appellant to Arthur Moore relating what transpired when she attempted to record this deed, from which the following excerpts are taken:

> Dear Arthur
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> * * * * *
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> When you sent us a deed to the part which was inside the sta. site and we went to have it recorded

> they said the deed wasn't any good as the taxes hadn't been pd for so many years. That we would have to redeem it. The D.A. Bridgeport sent the tax collector to Sac. and we were to call on our way through when we came over to Benton again. Well, when we called the D.A. was busy and his office girl said for us to go to the collectors office and she would explain. We did. And she said they told her in Sac. that we would have to redeem "all the Sta-site or none." Meaning the 11.030 acres out side the 160 acres. I told them anyone could see that part was out side etc. She said "Well, you redeem all or none." So I had to give them a check for the redemption of the 20 acres sta. site. (not sold to Co, & State, & yours, etc.) So when I gave her the check I said, "Listen! when the Gov, State, or Co, whoever owns this land says we are trespassing, they aren't going to get it easy." I knew it was under the Bureau of Land Management, Why didn't they? Also the land inside the 160 spoken of above was marked "owner unknown" on their maps inside 160.
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> Well, I knew we couldn't sell it with only a tax redemption deed if we wished to sell. But the D.A. spoke as if your deed to us included all the 20 acres, and said it didn't belong to the B. of Land Management etc. The tax assessor said later, "I wouldn't do anything with the land for it may not be yours." I told them, "it was the first time we ever had to buy a piece of land. * * *" (underscoring in original).

From the foregoing, it is apparent the appellant knew that her deed from the Moores did not pass title to the part of the old station site which lay outside the boundary of the former Moore homestead. Moreover, while the deed purported to convey only 11.67 acres, the additional area involved 11.03 acres, nearly doubling the area.

Appellant seems to believe that because she was obliged by the assessor to pay taxes on the federal land she thereby became the owner, even though she recognized that the 11.03-acre tract was not included in the land conveyed to her by the Moores, as she stated that she "thought the people in the tax office knew what they were doing." Acting on that belief, the Warners proceeded to do some clearing (presumably of weeds), installed a water pipeline, and planted some trees. However, appellant was still dissatisfied with the fact that she had no evidence of ownership other than the tax redemption certificate which

she received when she paid the back taxes assessed against both parcels. She, therefore, wrote to the State Controller, Division of Tax Deeded Land. The Assistant Division Chief responded by letter dated December 21, 1967, in which he advised that none of the lands in question were presently tax-deeded to the State of California, that according to their records, all of the station site had been included within the Moore homestead. He further suggested that appellant consult an attorney or a title company to ascertain the status of the land, adding:

> The documents forwarded along with your letter include several redemption certificates and several references are made to a tax deed. The redemption certificates are not tax deeds and do not convey any title, except to restore title to the owner of record free and clear of lien or taxes. (Underscoring added).

About this same time appellant was told by the tax assessor that the 11.03-acre tract might not be hers. Appellant's brother then removed the water line.

Appellant applied to purchase the land under the first proviso of the Color of Title Act, supra, described as a Class 1 claim by the regulations. 43 CFR 2540.0-5. Presumably she did this on the basis of the improvements she placed on the land. But the law requires that to qualify under this proviso the applicant and/or her predecessors must have held the land under claim or color of title in good faith, peaceful, adverse possession for at least 20 years. To qualify under the second proviso (Class 2), such possession must have been maintained since January 1, 1901.

The historical duration of possession in this case was not maintained in accordance with either requirement. Appellant does not have color of title because the only instrument on which she relies is the tax redemption certificate which does not purport to convey the title. The Moore deed did not describe the land in question and appellant fully understood this. Although she apparently did consider that by paying the taxes erroneously assessed against the federal land in 1964 she thereby became the owner, she learned in 1967 that this was not true. Therefore, even if her possession could be said to have been in good faith under the circumstances, such good faith possession lasted less than four years, far short of the required period.

Moreover, as noted in the decision below, to qualify under a claim of Class I, the improvements relied upon must be present on the land at the time the application is filed, and must enhance the value of the land. Virgil H. Menefee, A-30620, (November 23, 1966). A report by field examiners of the Bureau noted that the water line was removed, trees were gone, and clearing was not ascertainable. Mere clearing, in any case, would not constitute a valuable improvement in the absence of a showing that it made the land more valuable for agricultural purposes, promoted the growth of timber, reduced the fire hazard or achieved some other purpose which would constitute a valuable improvement. Homer Wheeler Mannix, 63 I.D. 249 (1956); Ellen M. Forsyth, A-25365 (November 30, 1948).

Accordingly, we find that the application does not show compliance with any single requirement of the law or the regulations.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

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Edward W. Stuebing, Member

We concur:

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Douglas E. Henriques, Member

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Newton Frishberg, Chairman